

REMARKS

Reconsideration of claims 1-2, 4-5, 7, 9, 11, and 13 is respectfully requested for the following reasons. Claims 14-36 have been canceled without prejudice, and Applicants reserve the right to pursue them by a divisional application.

Claim Rejections 35 U.S.C. §112

In the Office Action, pending claims were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. More specifically, the Examiner contends that the non-fat milk solids (MSNF) of the intermediate condensed skim milk at 35-36.5% were said to be critical in the parent applications. It is then contended that the claims in this application and the specification are silent in this regard. (Page 2, last paragraph of the Office Action.) The Examiner requested clarification and/or correction.

In reply, although the earlier specification referred to the MSNF range of 35-36.5% and stated that upper and lower limits were “critical”, it is clear that this was only intended in the context of the specific skim milk example being described. After all, the original specification was directed to the production of concentrates at MSNF levels above 29.9% by weight, and a person of ordinary skill in the art would understand that it is simply necessary to evaporate a larger portion of the liquid content of the milk starting product to form a higher solids milk intermediate. More particularly, however, as stated in the earlier September 22, 2008 amendment, the remaining claims in this application are directed to the automatic flushing and sanitizing claim language and broadened/amended concentrate milk solids in formulations. The remaining claims in this application, except for these features, are supported by the disclosures of the earlier applications. Thus, as the Examiner will understand, the claims in this application are not silent with respect to the milk solids non-fat (MSNF). The pending claims are directed to concentrated milk solids of about 0.5-28% (MSNF). Specific support for the MSNF amounts is

found in the operating Examples beginning at page 6 through page 8 (A)-(D). These specific Examples clearly enable a person of skill in the art to make and/or use the invention. The Examiner's detailed attention is directed to these specific Examples of representative aseptic beverage concentrates used to make the liquid beverages containing real milk solids according to this invention.

When dealing with "real milk solids" (See the definition at page 3, line 11 of the specification), the protein in the milk solids presents an opportunity for bacteria to develop and grow. Following recognition of this problem, a procedure had to be developed which solved it. That procedure is automatic flushing and sanitizing of the dispenser by dispensing heated water into the mixing chamber when no product has been dispensed for a period of time. The pending claims cover this procedure. Accordingly, the special problem that is created by dispensing "real milk solids" is solved by the step of automatic flushing and sanitizing in the pending claims.

With respect to the remaining §112 issue concerning the stabilizer, main claim 1 has now been amended to recite the stabilizer as consisting essentially of "sodium hexametaphosphate and carrageenan".

Accordingly, with respect to the previous claim rejections under 35 U.S.C. §112, they are considered to be overcome in view of the above amendment and remarks.

Double Patenting

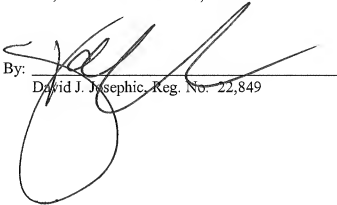
The pending claims have been rejected on the ground of non-statutory double patenting of the claims 35-61 of U.S. Patent No. 6,887,505. Applicants disagree with the Examiner's reasoning in connection with the ground of non-statutory double patenting. However, in order to advance the prosecution of pending claims to grant, a terminal disclaimer is currently filed herewith in compliance with 37 C.F.R. 1.321(c) by the undersigned registered attorney of record.

In view of the above remarks and amendments, this application is considered to be in condition for allowance, and a Notice of Allowance is respectfully requested.

CONCLUSION

A terminal disclaimer form and filing fee of \$140 are concurrently submitted with this Reply. It is believed that no other fee is due for this filing. Please consider this as an authorization to charge Deposit Account 23-3000 for any fee deemed due.

Respectfully submitted,
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